

EXHIBIT A

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of:

**CERTAIN HIGH-BRIGHTNESS LIGHT
EMITTING DIODES AND PRODUCTS
CONTAINING SAME**

Investigation No. _____

**COMPLAINT OF LUMILEDS LIGHTING U.S., LLC UNDER
SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

Complainant

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Proposed Respondents

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TABLE OF CONTENTS

	Page
LIST OF EXHIBITS.....	iii, iv, v
I. INTRODUCTION	1
II. THE PARTIES.....	2
A. Complainant Lumileds.....	2
B. Proposed Respondent UEC.....	3
C. Proposed Respondent Epistar	4
D. Planned Merger Between Epistar and UEC.....	5
III. THE PATENTS AT ISSUE.....	6
A. The '718 Patent.....	6
B. The '580 Patent.....	7
C. The '316 Patent.....	8
IV. NON-TECHNICAL DESCRIPTION OF THE PATENTED TECHNOLOGY	9
A. Background On LED Technology	9
B. Non-Technical Description Of The '718 Patent	11
C. Non-Technical Description Of The '580 Patent	13
D. Non-Technical Description Of The '316 Patent	13
V. RELATED LITIGATION	14
A. The RGA Suit	14
B. The Prior UEC Suit.....	15
C. The Citizen Lawsuit.....	16
D. The Prior Epistar Lawsuit	16
VI. LICENSING OF THE ASSERTED PATENTS.....	17
VII. UNLAWFUL AND UNFAIR ACTS OF PROPOSED RESPONDENTS.....	18
A. Proposed Respondent Epistar	18
B. Proposed Respondent United Epitaxy Company	19
C. Asserted Claims Against Proposed Respondents	21
VIII. SPECIFIC INSTANCES OF UNLAWFUL IMPORTATION AND SALE.....	22
A. Proposed Respondent UEC's GB and MB LED Products	22
B. Proposed Respondent Epistar's OMA Products	23
IX. DOMESTIC INDUSTRY	24

TABLE OF CONTENTS
(continued)

	Page
A. Substantial Investment In The Exploitation Of The Subject Patents.....	25
B. Significant Investment In Plant And Equipment	27
C. Significant Employment Of Labor And Capital	27
X. PRAYER FOR RELIEF	28

EXHIBIT LIST

Exhibit No.	Description
1	Certified copy of U.S. Patent No. 5,008,718 (“the ’718 patent”)
2	Certified copy of U.S. Patent No. 5,376,580 (the ’580 patent”)
3	Certified copy of U.S. Patent No. 5,502,316 (the ’316 patent”)
4	Certified copies of chain-of-title documents for the ’718 patent
5	Certified copies of chain-of-title documents for the ’580 patent
6	Certified copies of chain-of-title documents for the ’316 patent
7	Overview and product information from Lumileds’ Web site
8	Joint venture information from Lumileds’ Web site
9	“Philips to expand lighting business and continue share buyback” press release
10	Company information from UEC’s Web site
11	“About Us,” “Milestones,” “Plants”, and “Contact Us” pages from UEC’s Web site
12	DigiTimes Displays article entitled “LED makers Epistar and UEC OKs merger”
13	“UEC moves AlGaInP LEDs” article
14	“Company Profile” from Epistar’s Web site
15	Epistar’s OMA AlGaInP LED chip specification
16	“Epistar and UEC to Merge in a Stock-for-Stock Transaction” press release
17	RGA Consent Judgment
18	’718 patent claim construction order from Prior UEC Litigation
19	Summary judgment order from Prior UEC Litigation
20	Press Release entitled “Lumileds and United Epitaxy Company Settle Litigation”
21	Citizen Settlement Agreement

- 22 Order Denying Epistar Corporation's Motion for Reconsideration and Granting Lumileds' Motion to Dismiss
- 23 Press Release entitled "Lumileds and Epistar Settle Lawsuit"
- 24 **(CONFIDENTIAL)** Summary of licensing agreements involving the '718, '580, and '316 patents
- 25 Epistar OMA Products Chart
- 26 Compoundsemiconductor.net article entitled "Mirror Adhesion Technique Boosts LED Chip Brightness"
- 27 Claim Chart Showing Epistar's Infringement of Claim 1 of the '580 Patent
- 28 Claim Chart Showing Epistar's Infringement of Claim 12 of the '316 Patent
- 29 UEC Metal Bond (MB) and Glue Bond (GB) Products Chart
- 30 *IEEE* article describing UEC's AlInGaP glue bond (GB) products
- 31 Compoundsemiconductor.net article entitled "Metal bonding delivers high-power AlGaInP-on-silicon LEDs"
- 32 Claim Chart Showing UEC's (metal bond) Infringement of Claim 1 of the '718 Patent
- 33 Claim Chart Showing UEC's (metal bond) Infringement of Claim 16 of the '580 Patent
- 34 Description and list of UEC's AlInGaP LED chips from UEC's Web site
- 35 Claim Chart Showing UEC's (glue bond) Infringement of Claim 1 of the '580 Patent
- 36 Claim Chart Showing UEC's (glue bond) Infringement of Claim 12 of the '316 Patent
- 37 Pages from the Web site of Chips and Wafers, Inc.
- 38 TELUX™ Series LED article from Vishay's Web site
- 39 High brightness TELUX™ LEDs in OMA Technology article from Vishay's Web site
- 40 Schematic of Lumileds' TS AlGaInP LED
- 41 Claim Chart Showing Lumileds' Practice of the '718 Patent

- 42 Claim Chart Showing Lumileds' Practice of the '580 Patent
- 43 Claim Chart Showing Lumileds' Practice of the '316 Patent
- 44 **(CONFIDENTIAL)** Declaration of Timothy W. Lester
- 45 Declaration of Lou Dadok

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I. INTRODUCTION

1. This Complaint is filed by Lumileds Lighting U.S., LLC (“Lumileds”), of San Jose, California, against proposed Respondents Epistar Corporation (“Epistar”) and United Epitaxy Company, Ltd. (“UEC”), both of Hsinchu, Taiwan, for violating Section 337 of the Tariff Act of 1930, as amended, by importing into the United States, selling for importation, or selling within the United States after importation certain high-brightness light-emitting diodes (“LEDs”) and products containing same that infringe one or more of the claims of Lumileds’ U.S. Patent Nos. 5,008,718 (“the ’718 patent”), 5,376,580 (“the ’580 patent”), and 5,502,316 (“the ’316 patent”). Copies of the patents are attached as Exhibits 1, 2, and 3 to this Complaint. Certified copies of the patents and their file histories have been ordered and will be submitted to the Commission upon receipt.

2. Lumileds seeks, as relief, a limited exclusion order barring entry into the United States of proposed Respondents’ LEDs, and any products containing such LEDs, that infringe one or more of the claims of Lumileds’ ’718, ’580 or ’316 patents (collectively, “the accused products”).

3. Lumileds also seeks, as additional relief, cease and desist orders prohibiting (1) the importation into the United States; (2) the sale, offer for sale, or solicitation of sales for such importation; or (3) the sale, offer for sale, solicitation of sales, marketing, or distribution within the United States; of any proposed Respondents’ LEDs, or products containing such LEDs, that infringe one or more of the claims of Lumileds’ ’718, ’580, or ’316 patents.

4. While Lumileds has identified Epistar and UEC as proposed Respondents, it may identify additional parties during the course of the investigation and seek leave to add them as Respondents in order to secure effective relief.

II. THE PARTIES

A. Complainant Lumileds

5. Complainant Lumileds is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 370 West Trimble Road, San Jose, California, 95131.

6. Lumileds designs, develops, manufactures, and markets high-brightness light-emitting diodes. These devices are replacing traditional light bulbs in automobile brake lights, traffic lights, electronic indicator lights, outdoor displays, and an ever-growing number of other lighting applications. Generally, these LEDs enjoy many advantages over traditional light bulbs, including high-efficiency, low power consumption, long life, and greater flexibility and programmability. Lumileds is a world leader in the manufacture of white, red, amber, blue, and green LED light sources, among other products. Additional information about Lumileds can be found on its website at www.lumileds.com, excerpts from which are attached as Exhibit 7.

7. Lumileds' origins lie in the Optoelectronics Division of Hewlett-Packard Company ("HP"), which is one of the pioneers of LED technology. In 1999, HP split into two companies, with the optoelectronics group being assigned to the new Agilent Technologies, Inc. ("Agilent"). Agilent joined with Koninklijke Philips Electronics N.V. ("Philips") to form Lumileds in November 1999, for the purpose of developing and marketing the world's brightest LEDs and LED products. Exh. 8. In August 2005, Philips announced its intention to purchase Agilent's share to become Lumileds' dominant shareholder. Exh. 9.

8. Lumileds is universally regarded as a pioneer and industry leader in the field of high-brightness LEDs. In particular, Lumileds is a world leader in the design and manufacture of AlGaInP LEDs and products. AlGaInP LEDs employ an active layer of AlGaInP (the elements aluminum ("Al"), gallium ("Ga"), indium ("In"), and phosphorus ("P")). Since the

sequence of the elements in this term is sometimes expressed AlInGaP, the simpler pronunciation of “al-in-gap” has become common.

9. Since its days as a division of HP, Lumileds has operated research, development, design, and manufacturing facilities in San Jose, California.

10. Lumileds owns by assignment the entire right, title, and interest in and to the ’718, ’316, and ’580 patents. Copies of recorded assignments of these patents are attached as Exhibits 4, 5, and 6, respectively. Pursuant to Rule 210.12(a)(9)(ii), a certified copy of the assignments will be submitted to the Commission upon receipt.

B. Proposed Respondent UEC

11. On information and belief, proposed Respondent UEC is a corporation organized and existing under the laws of Taiwan, having a principal place of business at 9F, No. 10, Li-Hsin Road, Science-Based Industrial Park, Hsinchu, Taiwan.

12. On information and belief, UEC was founded in 1993 by a former HP engineer, Kuo-Hsin Huang. Dr. Huang had worked for years with the inventors of the ’718 patent designing AlGaInP LED products. Shortly after leaving HP, Dr. Huang founded UEC, where he became Chairman. UEC manufactures and supplies AlGaInP and other high-brightness LED chips and wafers. Exh. 10. Additional information about UEC can be obtained from its website at www.uec.com.tw, excerpts of which are attached as Exh. 11.

13. According to the on-line “DigiTimes” trade journal, UEC’s revenues in the second quarter of 2005 were approximately NT\$705 million (approximately \$21.4 million U.S.). Exh. 12. On information and belief, UEC’s revenue is based almost entirely on the sale of LEDs.

14. On information and belief, UEC introduced “glue bonding” (“GB”) LED chips and large-size AlGaInP high-brightness LED chips using “metal bonding” (“MB”) technology in

2002. As discussed in more detail below, UEC's glue-bond and metal-bond LEDs infringe one or more claims of Lumileds' '718, '580, and '316 patents.

15. On information and belief, UEC sells its metal-bond and glue-bond products outside the United States for importation into the United States or for inclusion in products that are imported into the United States, imports those products into the United States, and/or sells those products directly into the United States. Exh. 13. Specifically, on information and belief, UEC's MB and GB LED products are incorporated into numerous products that are imported, used, and sold in the United States, including without limitation products used in traffic lights, LED flashlights and outdoor displays. Other unlawful acts and products containing UEC's infringing MB and GB LED products are likely to be discovered during the course of the investigation.

C. Proposed Respondent Epistar

16. On information and belief, proposed Respondent Epistar is a corporation organized and existing under the laws of Taiwan, having a principal place of business at 5 Li-Hsin 5th Road, Science-Based Industrial Park, Hsinchu, Taiwan, R.O.C.

17. On information and belief, Epistar was founded in 1996 and develops, manufactures, and markets high-brightness LED products, including AlGaInP LEDs. Additional information about Epistar can be obtained from its website at www.epistar.com.tw, excerpts of which are attached as Exh. 14.

18. Like UEC, Epistar was launched with the help of a former HP engineer. In the early 1990s, Jacob Tarn was a member of the team at HP that commercialized the invention of the '718 patent and developed the first commercial AlGaInP LEDs. During his years working in this group, Dr. Tarn acquired substantial information on the design and manufacture of HP's AlGaInP LEDs.

19. In 1996, Dr. Tarn resigned from HP and joined Epistar at its inception. From Epistar's founding in 1996 until joining its Board of Directors in 2001, Dr. Tarn was the Vice President responsible for production of Epistar's AlGaInP LED products.

20. According to the on-line "DigiTimes" trade journal, Epistar's revenues in the second quarter of 2005 were approximately NT\$811 million (approximately \$24.3 million U.S.).

Exh. 12. On information and belief, Epistar's revenue is based almost entirely on the sale of LEDs.

21. On information and belief, Epistar's product lines include high-brightness AlGaInP LEDs that are based on its so-called Omnidirectional Mirror Adhesion ("OMA") technique. As discussed in more detail below, Epistar's OMA LEDs infringe one or more claims of Lumileds' '580 and/or '316 patents.

22. On information and belief, Epistar sells its OMA products outside the United States for importation into the United States or for inclusion in products that are imported into the United States, imports those products into the United States, and/or sells those products directly into the United States. According to Epistar's web site, Epistar's OMA products are incorporated into numerous products that are imported, used, and sold in the United States, including fax machines, scanner lighting, automotive interior and exterior lighting, LCD back lighting, outdoor/indoor displays, traffic signals, indicators for various consumer electronic equipments, light sources for general illumination, and other applications. Exh. 14 and 15. Other unlawful acts and products containing Epistar's infringing OMA LED products are likely to be discovered during the course of the investigation.

D. Planned Merger Between Epistar and UEC

23. On or about August 15, 2005, Epistar and UEC announced they were planning to merge. Exh. 16.

24. If and when the merger takes place, it is not expected to significantly alter the nature or scope of the infringing products imported, sold for importation, or sold in the United States after importation, and thus will not affect the real parties in interest, the Commission's jurisdiction, or the need for administrative relief in the form of an exclusion order and/or cease-and-desist orders.

III. THE PATENTS AT ISSUE

A. The '718 Patent

25. U.S. Patent No. 5,008,718 ("the '718 patent"), entitled "Light-Emitting Diode With An Electrically Conductive Window," issued on April 16, 1991, to Robert M. Fletcher, *et al.* Exh. 1. This patent was originally assigned to HP, but was subsequently reassigned to Agilent and, finally, to Lumileds. Exh. 4.

26. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, one certified copy of the U.S. Patent and Trademark Office prosecution history for the '718 patent, plus three additional copies thereof; as well as, four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. letters patent accompany this Complaint.

27. The following foreign patents and patent application correspond to the '718 patent:

<u>Type</u>	<u>Number</u>	<u>Filing Date</u>	<u>Status</u>
European Patent [EP]	0434233	Nov. 23, 1990	Granted
Great Britain [GB]	0434233	Nov. 23, 1990	In force (corresponds to EP 434233)
Germany Patent [DE]	69017396	Nov. 23, 1990	In Force (corresponds to EP 0434233)

Hong Kong Patent [HK]	169495	Nov. 2, 1995	Ceased (non-payment of renewal fee)
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There are no other foreign patents or patent applications corresponding to the '718 patent that have been issued, abandoned, denied, withdrawn, or remain pending.

B. The '580 Patent

28. U.S. Patent No. 5,376,580 ("the '580 patent"), entitled "Wafer Bonding Of Light Emitting Diode Layers," issued on December 27, 1994, to Fred A. Kish, *et al.* Exh. 2. This patent was originally assigned to HP, but was subsequently reassigned to Agilent and, finally, to Lumileds. Exh. 5.

29. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, one certified copy of the U.S. Patent and Trademark Office prosecution history for the '580 patent, plus three additional copies thereof; as well as, four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. letters patent accompany this Complaint.

30. The following foreign patents and patent applications correspond to the '580 patent:

<u>Type</u>	<u>Number</u>	<u>Filing Date</u>	<u>Status</u>
European Application [EP]	0727829	Jan. 21, 1994	Withdrawn
European Application [EP]	0730311	Jan. 21, 1994	Withdrawn
European Patent [EP]	0616376	Jan. 21, 1994	Granted
European Patent [EP]	0727830	Jan. 21, 1994	Granted
Great Britain [GB]	0616376	Jan. 21, 1994	In Force (corresponds to EP 0616376)
Great Britain [GB]	0727830	Jan. 21, 1994	In Force (corresponds to EP 0727830)

Germany Patent [DE]	69406964	Jan. 21, 1994	In Force (corresponds to EP 0616376)
Germany Patent [DE]	69432426	Jan. 21, 1994	In Force (corresponds to EP 0727830)
Japan Patent [JP]	3532953	March 8, 1994	Granted
Japan Application [JP]	2003294341	Aug. 18, 2003	In Examination
Japan Application [JP]	2003294342	Aug 18, 2003	Granted
Korea Patent [KR]	0338180	March 18, 1994	Granted
Korea Patent [KR]	0342749	Jan. 5, 2002	Granted
Korea Patent [KR]	0339963	Jan 5, 2002	Granted
Korea Patent [KR]	0401370	Jan 5, 2002	Granted
Taiwan Patent [TW]	79425	Jan. 20, 1994	Granted

There are no other foreign patents or patent applications corresponding to the '580 patent that have been issued, abandoned, denied, withdrawn, or remain pending.

C. The '316 Patent

31. U.S. Patent No. 5,502,316 ("the '316 patent"), entitled "Wafer Bonding of Light Emitting Diode Layers," was issued to Fred A. Kish, *et al.* on March 26, 1996. Exh. 3. This patent was originally assigned to HP, but was subsequently reassigned to Agilent and, finally, to Lumileds. Exh. 6.

32. The '316 patent issued from a continuation of an earlier application, which itself was a division of the application that issued as the '580 patent.

33. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, one certified copy of the U.S. Patent and Trademark Office prosecution history for the '316 patent, plus three additional copies thereof; as well as, four copies of each patent and applicable

pages of each technical reference mentioned in the prosecution history of each involved U.S. letters patent accompany this Complaint.

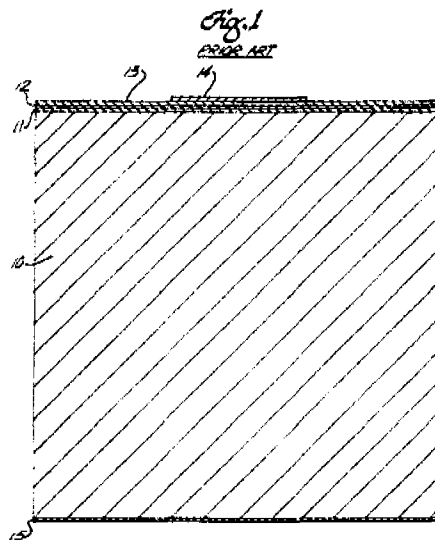
34. The same foreign patents and patent applications corresponding to the '580 patent also correspond to the '316 patent.

IV. NON-TECHNICAL DESCRIPTION OF THE PATENTED TECHNOLOGY

A. Background On LED Technology

35. The Lumileds patents are directed to certain high-brightness LEDs, and methods of producing such LEDs, that have a higher light output and greater efficiency than prior art LEDs.

36. An LED is a semiconductor device that converts an electrical current into light. In a surface-emitting LED of the type used in the vast majority of LED displays, the device geometry is simple, as illustrated in Figure 1 of the '718 patent and reproduced below:



This standard LED structure includes a top electrode 14 and a bottom electrode 15. Between the electrodes are semiconductor layers, portions of which conduct predominately negative charge carriers called electrons and portions of which conduct predominately positive charge carriers called holes. In the typical example of Figure 1, substrate 10 and lower confining layer 11

conduct negative charge carriers and are called n-type. Upper confining layer 13 conducts positive charge carriers and is called p-type. The region of the semiconductor that includes a transition from p-type to n-type material is called a p-n junction. This p-n junction gives a typical LED its ability to generate light.

37. When a voltage is applied to the LED shown in Figure 1, the electrons flow upward from electrode 15 and holes flow downward from electrode 14. Confining layers 11 and 13 confine the charge carriers, both positive and negative, in active layer 12. When the positive and negative charge carriers collide in active layer 12, *i.e.*, when a negatively-charged electron fills or recombines with a positively-charged hole, light is generated. The color or wavelength of the generated light is determined by a characteristic of active layer 12 called its bandgap. The bandgap is the unique energy difference in a particular compound between the energy of an electron before and after it fills or recombines with a hole. This bandgap energy corresponds to the color or wavelength of light that a given material will absorb or emit.

38. For the light generated in the active region of an LED to be useful, this light must escape the LED without being absorbed. Generally, a layer that has a greater bandgap than the material that generated the light will be transparent to the emitted light. Generally, a layer that has a lower bandgap than the material that generated the light will absorb the emitted light. By carefully selecting compounds based upon their characteristic bandgap, an LED can be designed that minimizes the absorption of the light it generates in its active region.

39. There are generally three classes of substrates used in commercial AlGaInP LEDs: absorbing substrate, transparent substrate, and mirrored substrate.

40. First, an “absorbing substrate” LED, such as the LED shown in Figure 2 of the ’718 patent, employs a substrate made of a material, such as GaAs, which absorbs the

downwardly directed light generated by the active layers. While such absorbing-substrate LEDs may be easier and less expensive to make, the absorption of light by the substrate reduces the brightness of the LED.

41. Second, a “transparent substrate” LED employs a substrate made from a material, such as gallium phosphide (“GaP”), that is transparent to the light generated by the active layer. The downwardly directed light is not absorbed, but instead passes through the transparent substrate and is reflected from a bottom metal adhesive and reflecting cup. The light is then emitted from the top or edges of the chip. Because the LED light passes through the transparent substrate and is reflected out of the LED, these devices are generally brighter than absorbing-substrate LEDs.

42. Third, a “mirrored substrate” LED employs a reflective material, such as a metal, to reflect the downwardly directed light away from the substrate and out through the top surface of the LED. Like “transparent substrate” devices, because the LED light is reflected out through the top surface of the LED, these devices are generally brighter than absorbing-substrate LEDs.

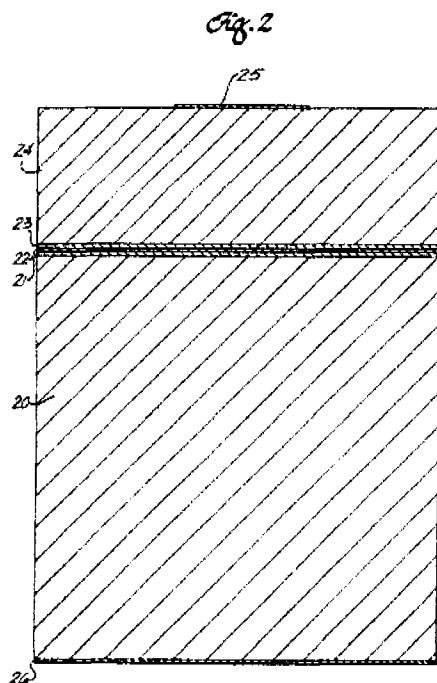
B. Non-Technical Description Of The '718 Patent

43. The '718 patent was a breakthrough invention that made possible the first commercial AlGaInP LEDs. The inventors of the '718 patent developed a technique for distributing current from the front electrical contact to the active p-n junction to more uniformly generate light throughout the active layer.

44. For years prior to the invention of the '718 patent, the inventors had struggled without success to achieve an AlGaInP LED with sufficient efficiency and brightness to make it commercially viable. Because the early results were disappointing, the inventors hypothesized that before they would be able to make a commercially-viable LED, they had to first solve the “current crowding” problem. Current crowding refers to the situation where the positive current

flowing down from the top contact does not spread out laterally towards the edges of the LED. (See Exh. 1, Figure 1.) As a result, much of the light generated by the LED is generated under the top contact. Because the top contact is not transparent, it blocks most of the light emitted by the LED.

45. The inventors of the '718 patent solved this problem by employing a novel window layer (*see*, layer 24 of Figure 2 of the '718 patent, reproduced below) over the LED active layers (*see*, layers 21, 22 and 23) that is highly conductive, so as to laterally spread the current from the top contact 25 and transparent so as not to absorb the light generated by the active layer. Contrary to the teachings of the prior art, the inventors discovered that this current spreading window layer may be comprised of material other than AlGaInP.



46. The invention of the '718 patent dramatically increased the brightness of AlGaInP LEDs. This advance made possible the first commercially viable AlGaInP LEDs.

C. Non-Technical Description Of The '580 Patent

47. The '580 and '316 patents represent another breakthrough in LED technology, which made possible AlGaInP LEDs employing transparent substrates or mirrored substrates attached through wafer bonding to the LED layers.

48. The LED active layer generates light that radiates in all directions. Because AlGaInP layers are epitaxially grown on light-absorbing GaAs substrates, the early commercial AlGaInP LEDs were absorbing-substrate LEDs. In such absorbing-substrate AlGaInP LEDs, a significant portion of this light is absorbed by the GaAs substrate below the active layers.

49. The '580 patent is directed to a method of forming an LED using a temporary growth substrate that is selected for compatibility with fabrication of LED layers and then wafer-bonding to the LED layers a layer or substrate that is selected based, for example, on its enhanced optical properties. The wafer bonded layer or substrate may be selected for its optical properties, such as being transparent or light-reflective. Thus, the invention of the '580 patent may be employed to realize the advantages of using a light-absorbing GaAs substrate during growth of the LED layers in an AlGaInP LED and then using the claimed wafer bonding to create a transparent-substrate or mirrored-substrate AlGaInP LED.

D. Non-Technical Description Of The '316 Patent

50. The '316 patent issued from a division of the application that issued as the '580 patent and, thus, contains essentially the same disclosures. Whereas the '580 patent claims methods of forming high-brightness LEDs using wafer bonding techniques, the '316 patent is directed, for example, to LED devices employing an optically transparent wafer-bond layer.

51. Employing the invention of the '580 patent and the '316 patent dramatically increases the brightness of AlGaInP LEDs and made possible the first commercial AlGaInP LEDs employing a transparent substrate or mirrored substrate.

V. RELATED LITIGATION

52. Lumileds has previously enforced the '718 patent against both UEC and Epistar, as well as against UEC's distributor, Robert G. Allen Company, Inc. ("RGA"), and against Citizen Electronics Co., Ltd. ("Citizen Electronics"), an importer of products incorporating Epistar LEDs.

A. The RGA Suit

53. In December 1999, HP asserted the '718 patent against RGA, a U.S. company that was importing and selling AlGaInP LEDs manufactured in Taiwan by UEC. *See Hewlett-Packard Company v. Robert G. Allen Company, Inc.*, No. 98-10164 AHM (MANx) (C.D. Cal.).

54. On February 9, 1999, HP and RGA executed a Consent Judgment, which was signed by HP, RGA, and United States District Judge A. Howard Matz. Exh. 17.

55. Paragraph 3 of this Consent Judgment states "[a]ll claims of the '718 patent are valid and enforceable."

56. Paragraph 4 of the Consent Judgment states "RGA has infringed the '718 patent by importing, selling and offering for sale devices manufactured by United Epitaxy Company, Ltd. ('UEC') embodying the claimed subject matter of the '718 patent, including but not limited to Part No. CSL-U508Q4U-UV."

57. Paragraph 5 of the Consent Judgment states "RGA acknowledges the validity of the '718 patent and that RGA's acts constitute infringement thereof."

58. Paragraph 6 of the Consent Judgment states "RGA shall cease and desist immediately from importing, selling or offering for sale any and all devices manufactured by UEC embodying the claimed subject matter of the '718 patent, including but not limited to Part No. CSL-U508Q4U-UV, unless and until such time as UEC obtains authorization to sell such

infringing devices either from HP or by operation of a final judgment rendered by a judicial officer that the '718 patent is invalid, unenforceable, or is not infringed by such devices.”

B. The Prior UEC Suit

59. From September 1999 through September 2001, Lumileds asserted the '718 patent against UEC in *United Epitaxy Co., Ltd. v. Hewlett-Packard Co., Agilent Technologies, Inc, and Lumileds Lighting U.S., LLC*, No. C 00-2518 CW (PVT) (N.D. Cal. filed September 7, 1999) (Wilken, J.) (“Prior UEC Litigation”).

60. In the Prior UEC Litigation, Lumileds accused UEC’s absorbing-substrate LED products of infringing the '718 patent.

61. At the time, Lumileds was not aware of any UEC transparent-substrate products, and therefore none of the transparent-substrate products at issue in the present Complaint were at issue in the Prior UEC Litigation.

62. In May 2001, United States District Judge Claudia Wilken issued an order construing the claims of the '718 patent. Exh. 18. In June 2001, Judge Wilken granted Lumileds’ motion for summary judgment, holding that the '718 patent was not invalid for anticipation, was not invalid for indefiniteness, and was not unenforceable due to inequitable conduct. Exh. 19. In that same Order, Judge Wilken denied UEC’s motion for summary judgment of non-infringement, misjoinder of an inventor, obviousness, and inequitable conduct.

63. Lumileds and UEC settled the Prior UEC Litigation on August 30, 2001. Although the exact terms of the settlement were confidential, the parties issued a press release, a copy of which is attached as Exhibit 20 to this Complaint. Lumileds will submit confidential documents relating to this settlement and other settlement agreements and licenses relating to the asserted patents as confidential appendices to this Complaint as soon as Lumileds complies with

the notice and/or authorization obligations of the confidentiality provisions of the agreements and licenses.

64. The absorbing-substrate LED products at issue in the Prior UEC Litigation are not at issue in the present action. Thus, the settlement of the Prior UEC Litigation does not apply to the accused products in this action.

C. The Citizen Lawsuit

65. In October 2002, Lumileds asserted the '718 Patent against Citizen Electronics and its U.S. subsidiary, CECOL, Inc. (collectively, "Citizen"). *See Lumileds Lighting U.S., LLC v. Citizen Elecs. Co., Ltd. and CECOL, Inc.*, No. C 02-5077 JW (EAI) (N.D. Cal.). Lumileds accused Citizen of importing into the U.S. and offering for sale, and selling infringing AlGaInP LED products from Epistar.

66. Lumileds and Citizen executed a Settlement Agreement and Mutual Release ("Citizen Settlement Agreement") in March 2003. A copy of that Citizen Settlement Agreement is attached as Exhibit 21.

D. The Prior Epistar Lawsuit

67. From January 2003 through July 2004, Lumileds asserted the '718 Patent against Epistar. *See Lumileds Lighting U.S., LLC v. Epistar Corp.*, No. C 02-5077 CW (PVT) (N.D. Cal.) (Wilken, J.) ("Prior Epistar Litigation").

68. In the Prior Epistar Litigation, Lumileds accused Epistar's AlGaInP LEDs of infringing the '718 patent. When the suit was initiated, Epistar was selling absorbing-substrate AlGaInP LED products, but had not yet introduced its mirrored-substrate AlGaInP LED products. Although Epistar initially concealed the existence of its mirrored-substrate ("OMA") AlGaInP LEDs, Lumileds eventually discovered those products and included them as accused products in the lawsuit.

69. In the Prior Epistar Litigation, Epistar adopted a number of the same arguments that UEC had employed in the Prior UEC Litigation (see paragraphs 59-64 above), which had previously been rejected by Judge Wilken in the Prior UEC Litigation.

70. The Prior Epistar Litigation was settled before the Court further construed the claims of the '718 patent or issued any rulings regarding Epistar's infringement of the '718 patent. Epistar had asserted counterclaims of, *inter alia*, interference with contract and unfair competition ("Tort Counterclaims"). Judge Wilken granted Lumileds' Motion for Judgment on the Pleadings and dismissed these Tort Counterclaims without leave to amend on August 13, 2003. After Epistar improperly alleged the same Tort Counterclaims in an amended complaint filed in September 2003, the Court granted Lumileds' Motion to Dismiss these Tort Counterclaims on February 12, 2004. Exh. 22.

71. Related to this litigation, Epistar filed an action for declaratory judgment that the '718 patent was not infringed, invalid, and unenforceable in the United States District Court for the Central District of California. In response to Lumileds' motion to transfer, that action was transferred to the United States District Court for the Northern District of California, where it was given docket number C 03-1130 CW (PVT), and consolidated with the Prior Epistar Litigation.

72. Lumileds and Epistar settled the case in July 2004. Although the terms of the settlement were confidential, a copy of a press release issued with the settlement is attached as Exhibit 23 hereto. Nothing in this settlement restricts Lumileds' right to assert the '580 patent and '316 patent against Epistar's OMA products.

VI. LICENSING OF THE ASSERTED PATENTS

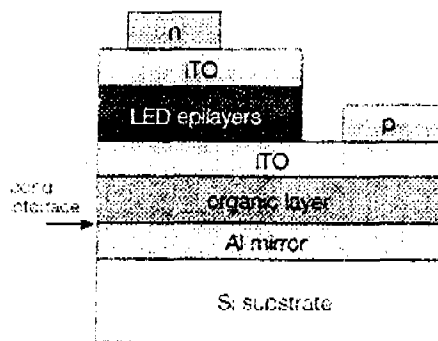
73. The '718, '580, and '316 patents have been licensed to various entities. These confidential licenses are identified in confidential Exhibit 24 to this Complaint.

VII. UNLAWFUL AND UNFAIR ACTS OF PROPOSED RESPONDENTS

A. Proposed Respondent Epistar

74. According to Epistar's website as it appeared in September 2005, its LED product lines currently contain at least ten AlGaInP LEDs that are produced using its OMA technique. Exh. 15. These OMA products bear the product designations ES-SAYL814, ES-SAYL822, ES-SAYL830, ES-SAYL840, ES-SASO814, ES-SASO822, ES-SAHR814, ES-SAHR822, ES-SAHR830, ES-SAHR840. Exh. 15 and 25. Epistar literature describing these products is attached as Exhibit 14.

75. Epistar engineers Donald Huo *et al.* provided a purported description of the OMA LEDs in a December 2003 article in the web journal "Compoundsemiconductor.net." Exh. 26. A cross-sectional view of the final AlGaInP high-brightness OMA chip as described in the Epistar article is reproduced below.



Cross-sectional view of the AlGaInP high-brightness OMA chip.

76. According to the Epistar engineers, the OMA LEDs are fabricated by growing AlGaInP and other "LED epilayers" on a temporary GaAs substrate (which is not shown in the figure), and depositing a first indium-tin oxide layer (the lower "ITO" layer shown in the figure) on the top of an AlGaInP-on-GaAs epiwafer. Next, these LED layers are coupled to a layer of

transparent organic material, a reflective aluminum layer, and a silicon substrate, through wafer bonding. Exh. 26.

77. The Epistar engineers further state that, after the bonding step, the light-absorbing GaAs substrate is removed by chemical etching and replaced with a second transparent ITO layer (the upper “ITO” layer shown in the figure). An “n” electrode is formed on the second ITO layer and a “p” electrode is formed on the first ITO layer. Exh. 26.

78. On information and belief, Epistar’s OMA AlGaInP LEDs continue to have the features described in this Complaint.

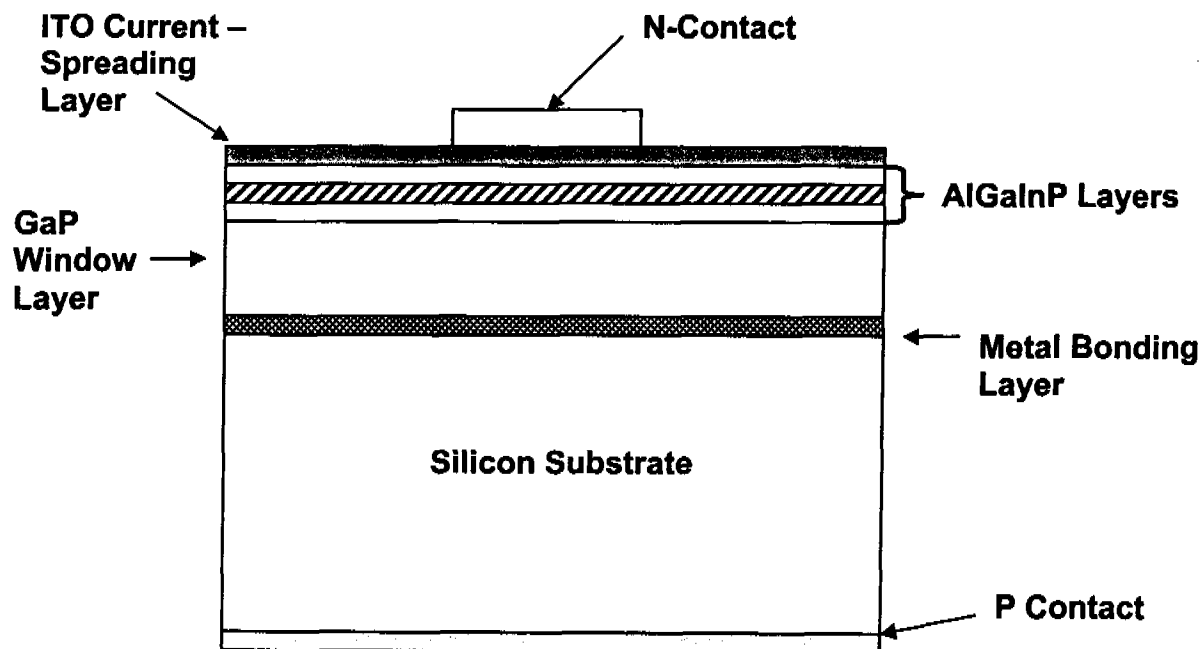
79. Epistar’s literature further states that its OMA LED products, depending on their individual size and performance characteristics, can be used in traffic signals, automotive lighting, backlighting, signage and channel letters, portable light sources, decorating and entertainment lighting, and architectural lighting. Exh. 14 and 15.

B. Proposed Respondent United Epitaxy Company

80. Proposed Respondent UEC’s product literature includes AlInGaP product lines described as “metal bond” and “glue bond” LEDs.

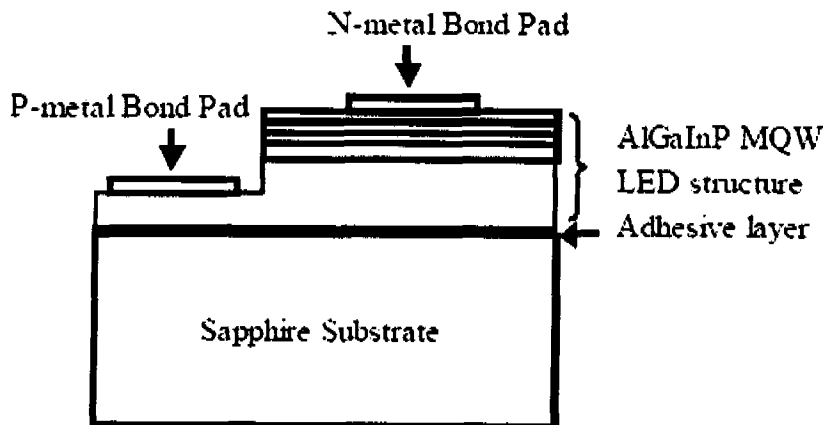
81. ***Metal bond products.*** On information and belief, UEC begins fabrication of its MB products by forming the AlGaInP active layers on a GaAs growth substrate, which has a crystal structure that is “lattice-matched” to the AlGaInP. UEC later removes the GaAs substrate and replaces it with an ITO layer, which lies on what will be the top of the active layers in the final device. The AlGaInP layers are coupled to a conductive and reflective metal bonding layer atop a conductive silicon substrate through wafer bonding. “P” and “n” electrical contacts are then added to the top and bottom of the device. UEC’s final MB AlGaInP product is generally depicted in the figure below:

UEC Metal Bond LED Structure



82. These MB products bear the product designations MB012SOL-AU, MB012SYM-AU, MB014SOL, MB014SYM-AU-01, MB028SOL-AU-02, MB028SYM, MB042SOL-AU-03, and MB042SOL-AU-04. Exh. 29. UEC literature purportedly describing these products is attached as Exhibit 31.

83. **Glue bond products.** On information and belief, UEC begins fabrication of its GB products by forming the AlGaInP active layers and GaP window layer on a GaAs growth substrate. A gold contact pad is formed on the GaP window layer and is then patterned into a ring shape. The GaP and gold contact are then coupled to a transparent organic adhesive (glue) layer and a sapphire substrate through wafer bonding. P-type and n-type electrical contacts are then added to the top and bottom of the device. A figure from UEC's website purportedly depicting the final UEC GB AlGaInP product is shown below:



Exh. 34 (specification sheets from web site). In this figure, the AlGaInP layers and the GaP window layer are part of the “AlGaInP MQW LED structure,” and the GaAs growth substrate is not shown, since it is removed.

84. These GB products bear the product designations GB014SOL-AU, GB014SYM-AU, and GB014SYS-AU. Exh. 29. UEC literature purportedly describing these products is attached as Exhibit 30 and 34.

C. Asserted Claims Against Proposed Respondents

85. On information and belief, the Epistar OMA LEDs satisfy all the limitations and thus infringe, either literally or through the doctrine of equivalents, at least claims 1, 2, 3, 16, and 18 of the '580 patent and claims 12-14 of the '316 patent. Claim charts demonstrating infringement by the Epistar OMA products of an exemplary claim from the '580 patent and the '316 patent are attached as Exhibits 27 and 28 to this Complaint.

86. On information and belief, UEC's MB LEDs satisfy all the limitations and thus infringe, either literally or through the doctrine of equivalents, at least claims 1 and 6 of the '718 patent and claims 8-9, 16 and 18 of the '580 patent. Claim charts demonstrating infringement by UEC's MB products of an exemplary claim from the '718 patent and the '580 patent are attached as Exhibits 32 and 33.

87. On information and belief, UEC's GB LEDs satisfy all the limitations of, and therefore infringe at least claims 1-3 and 23- 28 of the '580 patent and claims 12-16 of the '316 patent. Claim charts demonstrating infringement by UEC's GB products of an exemplary claim from the '580 patent and the '316 patent are attached as Exhibits 35 and 36.

88. Lumileds may amend the list of claims it asserts against the Respondents as discovery progresses.

VIII. SPECIFIC INSTANCES OF UNLAWFUL IMPORTATION AND SALE

89. On information and belief, proposed Respondents UEC and Epistar import, sell for importation, and/or sell in the United States after importation the accused LED products described above. Proposed Respondents' infringing LEDs are also incorporated into numerous products that are imported and sold within the United States. Specific instances of unlawful activities are described below.

A. Proposed Respondent UEC's GB and MB LED Products

90. On information and belief, proposed respondent UEC sells GB LED products bearing the designations GB014SOL-AU, GB014SYM-AU, and GB014SYS-AU. Exh. 29 and 34.

91. On information and belief, proposed respondent UEC sells MB products bearing the designations MB012SOL-AU, MB012SYM-AU, MB014SOL, MB014SYM-AU-01, MB028SOL-AU-02, MB028SYM, MB042SOL-AU-03, and MB042SOL-AU-04. Exh. 29 and 34.

92. On information and belief, products containing at least UEC's MB LED chips have been marketed and offered for sale in the United States through importation.

93. For example, UEC's GB AlGaInP LED and UEC's MB AlGaInP LED products has been offered for sale by Chips and Wafers, Inc., 5234 East Hatcher Road, Paradise Valley,

Arizona, 85253, including at least products GB014-SOL, MB042SOL. A copy of a cached web page for this company offering this product is attached. Exh. 37.

94. On October 27, 2005, Lumileds purchased a Coast V8 Pocket Torch LED flashlight at Fry's Electronics in Sunnyvale, California. The LED die in this product appears to be a UEC glue bond ("GB") AlGaInP LED. Exh. 45. On information and belief, UEC does not manufacture these products in the United States, so these products were apparently imported into the United States.

95. UEC's MB and GB bond products are also marketed to customers in the United States through UEC's web site. Exhs. 11 and 34.

96. Upon information and belief, UEC's MB and GB products are classified under at least item number 8541 of the Harmonized Tariff Schedule (HTS) of the United States. This HTS item number is intended for illustration only and is not intended to be restrictive of the products accused.

97. On information and belief, products containing UEC's metal-bond or glue-bond LED chips are classified under at least item numbers 8530 and 9405 of the Harmonized Tariff Schedule (HTS) of the United States. These HTS item numbers are intended for illustration only and are not intended to be restrictive of the products accused.

B. Proposed Respondent Epistar's OMA Products

98. On information and belief, proposed respondent Epistar imports OMA products, including products bearing the designations ES-SAYL812, ES-SAHR812, ES-SASO812, ES-SAYL814, ES-SAHR814, ES-SASO814, ES-SAYL822, ES-SAHR822, ES-SASO822, ES-SAYL830, ES-SAHR830, ES-SASO830, ES-SAYL840, ES-SAHR840 and ES-SASO840, into the United States and sells such products in the United States after importation. Exh. 15 and 25.

99. On information and belief, products containing Epistar's OMA LED products were imported into the United States and sold within the United States after importation.

100. On information and belief, Epistar's OMA LED products are marketed and offered for sale by Vishay Intertechnology, Inc., of Malvern, Pennsylvania, under the brand name Telux. Exh. 38 and Exh. 39.

101. On October 28, 2005, Lumileds placed a purchase order with Northern Tool and Equipment for an Ultra Star LED Beacon light. The LED Beacon light was shipped from Fort Mill, South Carolina. Lumileds received the LED Beacon light at Lumileds' San Jose facility on November 1, 2005. The LED die in this LED Beacon light appear to be Epistar OMA AlGaInP LEDs. Exh. 45. On information and belief, Epistar does not manufacture these products in the United States, so these products were apparently imported into the United States.

102. Epistar's OMA AlGaInP LED products are also marketed to customers in the United States through Epistar's web site. Exhs. 14 and 15.

103. Upon information and belief, Epistar's OMA LED products are classified under at least item number 8541 of the Harmonized Tariff Schedule (HTS) of the United States. This HTS item number is intended for illustration only and is not intended to be restrictive of the products accused.

104. On information and belief, products containing Epistar's OMA LED chips are classified under at least item numbers 8512, 8530, 8531, 9013, and 9405 of the Harmonized Tariff Schedule (HTS) of the United States. These HTS item numbers are intended for illustration only and are not intended to be restrictive of the products accused.

IX. DOMESTIC INDUSTRY

105. A domestic industry as defined by 19 U.S.C. § 1337(a)(3)(A) exists in the United States with respect to articles by reason of Lumileds' significant investment in plant and

equipment relating to the subject patents, significant employment of labor and capital, and substantial investment in the exploitation of the subject patents.

A. Substantial Investment In The Exploitation Of The Subject Patents

106. Lumileds and its predecessor HP built a substantial and previously non-existent industry around the breakthrough inventions claimed in the patents-in-suit. The invention of the '718 patent made possible a revolutionary new class of commercial high-brightness LEDs. Recognizing the importance of this discovery, HP immediately began its investment in commercializing AlGaInP LEDs. In early 1992, HP announced the release of its new AlGaInP LEDs, giving the AlGaInP LED market its start. These initial products based on the technology of the '718 patent used a light-absorbing GaAs substrate.

107. HP continued to investigate ways to improve the brightness of its AlGaInP LEDs, leading to the further breakthrough innovation of employing a novel wafer bonding technology in its LEDs, as disclosed and claimed in the '580 patent and '316 patent. This wafer bonding technology allowed HP to make and sell the world's first AlGaInP LED with a wafer bonded transparent substrate in 1994. The use of such a wafer-bonded transparent substrate resulted in drastically increased performance and has allowed HP and later Lumileds to remain the world's leading manufacturer of high-brightness AlGaInP LEDs.

108. Lumileds' transparent-substrate AlGaInP products have been and are the cornerstone of Lumileds' business. Since 1999, Lumileds' transparent-substrate AlGaInP LED products have accounted for a large portion of the hundreds of millions of dollars of revenue generated by Lumileds. Although Lumileds has continued to make improvements to its products over the years, the fundamental design based on the inventions of the patents-in-suit has remained unchanged.

109. A schematic depiction of Lumileds' transparent-substrate AlGaInP LED chip is attached as Exhibit 40. As shown in this diagram, Lumileds' transparent-substrate AlGaInP LEDs include both the current-spreading ("p-GaP") window layer disclosed in the preferred embodiment of the '718 patent, and the wafer bonded transparent substrate ("n-GaP") disclosed as a preferred embodiment of the '580 and '316 patents. Although certain details of the devices may have changed over time, all of Lumileds' transparent-substrate AlGaInP LEDs have employed the fundamental design depicted in this diagram. Separate claim charts reading an exemplary claim on the '718, '580, and '316 patents onto Lumileds' transparent-substrate AlGaInP LEDs are attached as Exhibits 41, 42, and 43.

110. Lumileds currently sells two transparent-substrate AlGaInP LED chip lines, the P3 and P4 lines. Each line includes a variety of chips of various sizes that create light of various colors in the amber, red, and red-orange range. These transparent-substrate AlGaInP LEDs are sold by Lumileds not only as chips, but also as part of various LED packages. For example, transparent-substrate AlGaInP LED chips are included in Lumileds' SnapLED, Superflux, Luxeon, and Luxeon III lines of LED packages.

111. Lumileds manufactures transparent-substrate AlGaInP LEDs in the United States. Specifically, Lumileds performs the growth and wafer bonding of every AlGaInP product at its facility in San Jose. Some subsequent processing, including the cutting of the wafers into die and packaging the die into LED lamps, is performed outside the United States. Sales of products that comprise or incorporate transparent-substrate AlGaInP chips generate hundreds of millions of dollars each year. Exh. 44.

112. Lumileds continues to research, design, and develop new LED products. Lumileds' research and development facilities are located in headquarters in San Jose,

California. Lumileds invests many millions of dollars and employs over 100 people in activities relating to the research, development, and design of new LED products (including both AlGaInP and non-AlGaInP LED products). Exh. 44.

113. Lumileds' licensing of the '718, '580, and '316 patents is described in Section VI above.

114. Lumileds has thus made and continues to make substantial investments in the exploitation of the subject '718, '580 and '316 patents, including engineering research and development, and licensing. Lumileds has thus demonstrated the existence of a domestic industry under 19 U.S.C. § 1337(a)(3)(C).

B. Significant Investment In Plant And Equipment

115. The transparent-substrate AlGaInP LED wafers are grown in Lumileds' facility in San Jose, California. To manufacture transparent-substrate AlGaInP LEDs at this volume, Lumileds has invested many millions of dollars in equipment dedicated to growth of AlGaInP crystals. Lumileds has also designed and built the equipment used to wafer bond the transparent substrates to the AlGaInP chips.

116. Since its formation in 1999, Lumileds has invested many millions of dollars in plant and equipment in its manufacturing and other facilities in the United States. Exh. 44.

117. Lumileds has thus made and will continue to make significant investments in its plant and equipment in the United States. Lumileds has thus demonstrated the existence of a domestic industry under 19 U.S.C. § 1337(a)(3)(A).

C. Significant Employment Of Labor And Capital

118. Lumileds has hundreds of employees in the United States, including employees responsible for the manufacturing and production of transparent-substrate AlGaInP LED.

119. Lumileds has earned hundreds of millions of dollars from the sale of LED products that practice the subject patents. Lumileds has invested and continues to invest its revenue in its manufacturing and production facilities in the United States, as well as the research, development, and design of new LED products. Exh. 44.

120. Lumileds has thus demonstrated and will continue to demonstrate significant employment of labor and capital in the United States. Lumileds has thus demonstrated the existence of a domestic industry under 19 U.S.C. § 1337(a)(3)(B).

X. PRAYER FOR RELIEF

121. Complainant Lumileds respectfully requests that the United States International Trade Commission:

- A. Institute an investigation, pursuant to section 337(b)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(b)(1), into the violations of section 337 by proposed Respondent United Epitaxy Company and proposed Respondent Epistar Corporation arising from their unlawful importation into the United States, sale for importation, and/or sale within the United States after importation of proposed Respondents' high-brightness light-emitting diodes, and products containing same, that infringe Lumileds' U.S. Patent Nos. 5,008,718, 5,502,316, and 5,376,580;
- B. Set a target date for completion of the investigation of no more than twelve months;
- C. Within that twelve-month period, schedule and conduct a hearing pursuant to section 337(c) for purposes of receiving evidence and hearing argument regarding proposed Respondents' violations of section 337, and, following the hearing, determine whether proposed Respondents have violated section 337;
- D. Issue a permanent exclusion order, pursuant to section 337(d), that forbids entry into the United States of light-emitting diodes made or sold by proposed Respondents United Epitaxy Company and Epistar Corporation that infringe one or more of the claims of Lumileds' U.S. Patent Nos. 5,008,718, 5,502,316, and 5,376,580;
- E. Issue a permanent exclusion order, pursuant to section 337(d), forbidding entry into the United States of any products that contain light-emitting diodes made or sold by proposed Respondents United Epitaxy Company

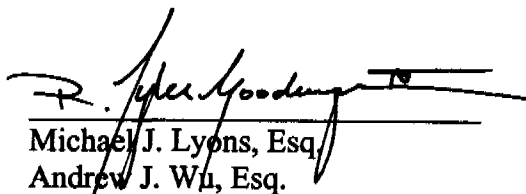
and Epistar Corporation that infringe one or more of the claims of Lumileds' U.S. Patent Nos. 5,008,718, 5,502,316, and 5,376,580;

- F. Issue permanent orders, pursuant to section 337(f), ordering all Respondents to cease and desist from importing into the United States, selling for such importation, or selling, offering for sale, promoting, marketing, or distributing within the United States after importation any products that contain any light-emitting diodes made, sold, or imported by proposed Respondents United Epitaxy Company and Epistar Corporation that infringe one or more of the claims of Lumileds' U.S. Patent Nos. 5,008,718, 5,502,316, and 5,376,580;
- G. Grant such other temporary and permanent relief as it deems appropriate under the law, based upon the facts complained of herein and as determined by the investigation.

Respectfully submitted,

Date: November 4, 2005

By:



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*Counsel for Complainant Lumileds Lighting
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VERIFICATION OF COMPLAINT

I, Ludek ("Lou") Dadok, declare that:

1. I am duly authorized to execute this verification.
2. My current title is Manager, Intellectual Property, of Lumileds Lighting U.S., LLC ("Lumileds").
3. I have read the foregoing Complaint and am familiar with the allegations and statements contained therein.
4. To the best of my knowledge, information, and belief, founded after reasonable inquiry, the allegations and statements contained in the foregoing Complaint are well-grounded in fact and are warranted by existing law or good-faith argument for the extension or modification of existing law or the establishment of new law.
5. The foregoing Complaint is not being filed for any improper purpose.
6. The allegations and other factual contentions in the foregoing Complaint have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Date: November 3, 2005



Lou Dadok